

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1505

AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-8.1-8-8, AS AMENDED BY SEA 559-2007, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) After a tax warrant becomes a judgment under section 2 of this chapter or a tax warrant is returned uncollected to the department under section 3 of this chapter, the department may take any of the following actions without judicial proceedings:

(1) The department may levy upon the property of the taxpayer that is held by a financial institution by sending a claim to the financial institution. Upon receipt of a claim under this subdivision, the financial institution shall surrender to the department the taxpayer's property. If the taxpayer's property exceeds the amount owed to the state by the taxpayer, the financial institution shall surrender the taxpayer's property in an amount equal to the amount owed. After receiving the department's notice of levy, the financial institution is required to place a sixty (60) day hold on or restriction on the withdrawal of funds the taxpayer has on deposit or subsequently deposits, in an amount not to exceed the amount owed.

(2) The department may garnish the accrued earnings and wages of a taxpayer by sending a notice to the taxpayer's employer. Upon

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receipt of a notice under this subdivision, an employer shall garnish the accrued earnings and wages of the taxpayer in an amount equal to the full amount that is subject to garnishment under IC 24-4.5-5. The amount garnished shall be remitted to the department. The employer is entitled to a fee in an amount equal to the fee allowed under IC 24-4.5-5-105(5). However, the fee shall be borne entirely by the taxpayer.

(3) The department may levy upon and sell property and may:

(A) take immediate possession of the property and store it in a secure place; or

(B) leave the property in the custody of the taxpayer; until the day of the sale. The department shall provide notice of the sale in one (1) newspaper, as provided in IC 5-3-1-2. If the property is left in the custody of the taxpayer, the department may require the taxpayer to provide a joint and several delivery bond, in an amount and with a surety acceptable to the department. At any time before the sale, any owner or part owner of the property may redeem the property from the judgment by paying the department the amount of the judgment. The proceeds of the sale shall be applied first to the collection expenses and second to the payment of the delinquent taxes and penalties. Any balance remaining shall be paid to the taxpayer.

(b) A special counsel or collection agency that makes a claim to a financial institution on behalf of the department under subsection (a)(1) or on behalf of a county treasurer under IC 6-1.1-23-10(c)(1) shall submit the following to the financial institution:

(1) Proof of employment or contract with the department under section 4 of this chapter or county treasurer under IC 6-1.1-23-1.5.

(2) Subject to subsection (c); a fee of ten dollars (\$10) for each claim.

(3) A notice of levy issued by the department or county treasurer.

(4) A form approved by the department or county treasurer containing instructions for remitting funds to the special counsel or collection agency making the claim.

(5) A stamped, self-addressed envelope for return of the form submitted under subdivision (4).

(c) A financial institution; special counsel; or collection agency may not assess or pass along a fee under subsection (b)(2) to:

(1) the department;

(2) the county treasurer;

(3) the taxpayer; or

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~~(4) any other individual or unit of government.~~

SECTION 2. IC 6-8.1-8-8.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 8.7. (a) The department shall operate a data match system with each financial institution doing business in Indiana.**

(b) Each financial institution doing business in Indiana shall provide information to the department on all individuals:

- (1) who hold one (1) or more accounts with the financial institution; and**
- (2) upon whom a levy may be issued by the department or a county treasurer.**

(c) To provide the information required under subsection (b), a financial institution shall do one (1) of the following:

(1) Identify individuals by comparing records maintained by the financial institution with records provided by the department by:

- (A) name; and**
- (B) either:**
 - (i) Social Security number; or**
 - (ii) tax identification number.**

(2) Comply with IC 31-25-4-31(c)(2). The child support bureau established by IC 31-25-3-1 shall regularly make reports submitted under IC 31-25-4-31(c)(2) available to the department or its agents for use only in tax judgment and levy administration.

(d) The information required under subsection (b) must:

- (1) be provided on a quarterly basis; and**
- (2) include the:**
 - (A) name;**
 - (B) address of record; and**
 - (C) either:**
 - (i) the Social Security number; or**
 - (ii) tax identification number;**

of individuals identified under subsection (b).

(e) When the department determines that the information required under subsection (d)(2) is identical for an individual who holds an account with a financial institution and an individual against whom a levy may be issued by the department or a county treasurer, the department or its agents shall provide a notice of the match, in compliance with section 4 of this chapter, if action is to be initiated to levy or encumber the account.

(f) This section does not preclude a financial institution from

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exercising its right to:

- (1) charge back or recoup a deposit to an account; or
- (2) set off from an account held by the financial institution in which the individual has an interest in any debts owed to the financial institution that existed before:

- (A) the state's levy; and
- (B) notification to the financial institution of the levy.

(g) A financial institution ordered to block or encumber an account under this section is entitled to collect its normally scheduled account activity fees to maintain the account during the period the account is blocked or encumbered.

(h) All information provided by a financial institution under this section is confidential and is available only to the department or its agents for use only in levy collection activities.

(i) A financial institution providing information required under this section is not liable for:

- (1) disclosing the required information to the department or the child support bureau established by IC 31-25-3-1;
- (2) blocking or surrendering an individual's assets in response to a levy imposed under this section by:

- (A) the department; or
- (B) a person or an entity acting on behalf of the department; or

- (3) any other action taken in good faith to comply with this section.

(j) The department or its agents shall pay a financial institution performing the data match required by this section a reasonable fee, as determined by the department, of at least five dollars (\$5) for each levy issued to the financial institution.

(k) This section does not prevent the department or its agents from encumbering an obligor's account with a financial institution by any other remedy available under the law.

SECTION 3. IC 20-12-1-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 13. (a) Notwithstanding any other law, the following records regarding alternative investments in which institutional investment funds invest are not subject to disclosure under IC 5-14-3, unless the information has already been publicly released by the keeper of the information:

- (1) Due diligence materials that are proprietary to the institutional investment fund or the alternative vehicle.
- (2) Quarterly and annual financial statements of alternative

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investment vehicles.

(3) Meeting materials of alternative investment vehicles that contain individual portfolio holdings.

(4) Records containing information regarding the underlying portfolio positions in which alternative investment vehicles invest.

(5) Capital call and distribution notices.

(6) Alternative investment agreements and all related documents.

(b) Notwithstanding subsection (a), the following information contained in records described in subsection (a) regarding alternative investments in which institutional investment funds invest are subject to disclosure under this chapter and are not considered a trade secret or confidential financial information exempt from disclosure:

(1) The name, address, and vintage year of each alternative investment vehicle.

(2) The dollar amount of the commitment made to each alternative investment vehicle by the institutional investment fund since inception.

(3) The dollar amount of cash contributions by the institutional investment fund to each alternative investment vehicle since inception.

(4) The dollar amount, on a fiscal year-end basis, of cash distributions received by the institutional investment fund from each alternative investment vehicle.

(5) The dollar amount, on a fiscal year-end basis, of cash distributions received by the institutional investment fund plus the remaining value of partnership assets attributable to the institutional investment fund's investment in each alternative investment vehicle.

(6) The net internal rate of return of each alternative investment vehicle since inception.

(7) The investment multiple of each alternative investment vehicle since inception.

(8) The schedule of management fees and costs assessed by each alternative vehicle to the institutional investment fund.

(9) The dollar amount of cash profit received by institutional investment funds from each alternative vehicle on a fiscal year-end basis.

(c) The following definitions apply throughout this section:

(1) "Alternative investment" means an investment in a

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private equity fund, real estate fund, venture fund, hedge fund, natural resource, or absolute return fund.

(2) "Alternative investment vehicle" means a limited partnership, limited liability company, or similar legal structure that is not publicly traded through which an institutional investment fund invests in portfolio companies.

(3) "Institutional investment fund" means a fund that consists of money managed in an endowment fund, including a quasi-endowment, and the returns on the endowment fund, that is held and invested by a state educational institution (as defined in IC 20-12-0.5-1).

(4) "Portfolio positions" means individual portfolio investments made by alternative investment vehicles.

SECTION 4. IC 21-29-2-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) Notwithstanding any other law, the following records regarding alternative investments in which institutional investment funds invest are not subject to disclosure under IC 5-14-3, unless the information has already been publicly released by the keeper of the information:

(1) Due diligence materials that are proprietary to the institutional investment fund or the alternative vehicle.

(2) Quarterly and annual financial statements of alternative investment vehicles.

(3) Meeting materials of alternative investment vehicles that contain individual portfolio holdings.

(4) Records containing information regarding the underlying portfolio positions in which alternative investment vehicles invest.

(5) Capital call and distribution notices.

(6) Alternative investment agreements and all related documents.

(b) Notwithstanding subsection (a), the following information contained in records described in subsection (a) regarding alternative investments in which institutional investment funds invest is subject to disclosure under this chapter and is not considered a trade secret or confidential financial information exempt from disclosure:

(1) The name, address, and vintage year of each alternative investment vehicle.

(2) The dollar amount of the commitment made to each alternative investment vehicle by the institutional investment

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fund since inception.

(3) The dollar amount of cash contributions by the institutional investment fund to each alternative investment vehicle since inception.

(4) The dollar amount, on a fiscal year-end basis, of cash distributions received by the institutional investment fund from each alternative investment vehicle.

(5) The dollar amount, on a fiscal year-end basis, of cash distributions received by the institutional investment fund plus the remaining value of partnership assets attributable to the institutional investment fund's investment in each alternative investment vehicle.

(6) The net internal rate of return of each alternative investment vehicle since inception.

(7) The investment multiple of each alternative investment vehicle since inception.

(8) The schedule of management fees and costs assessed by each alternative vehicle to the institutional investment fund.

(9) The dollar amount of cash profit received by institutional investment funds from each alternative vehicle on a fiscal year-end basis.

(c) The following definitions apply throughout this section:

(1) "Alternative investment" means an investment in a private equity fund, real estate fund, venture fund, hedge fund, natural resource, or absolute return fund.

(2) "Alternative investment vehicle" means a limited partnership, limited liability company, or similar legal structure that is not publicly traded through which an institutional investment fund invests in portfolio companies.

(3) "Institutional investment fund" means a fund that consists of money managed in an endowment fund, including a quasi-endowment, and the returns on the endowment fund, that is held and invested by a state educational institution (as defined in IC 20-12-0.5-1).

(4) "Portfolio positions" means individual portfolio investments made by alternative investment vehicles.

SECTION 5. IC 28-1-12-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) Unless otherwise provided in an agreement or a trust, a bank or trust company that holds funds or property as a fiduciary may use the funds or property to purchase from the bank, the trust company, or an affiliate of the bank or trust

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company, a product, service, or security, including an insurance product or security that is underwritten by the bank, the trust company, an affiliate of the bank or trust company, or a syndicate or selling group that includes the bank, the trust company, or an affiliate of the bank or trust company if the:

- (1) purchase price and any ongoing charges and costs are fair, reasonable, and substantially equivalent to the cost of similar products and services; and
- (2) purchase complies with IC 30-4-3.5.

The compensation for the product, services, or security received by the bank, trust company, an affiliate of the bank or trust company, or a syndicate or selling group that includes the bank, the trust company, or an affiliate of the bank or trust company may be in addition to the compensation that the bank or trust company is otherwise entitled to from the fiduciary account.

(b) A bank or trust company that makes a purchase or sale described in subsection (a) shall disclose, at least annually, to each person entitled to receive statements of account activity from the bank or trust company any purchase or sale made by the bank or trust company during the year. The disclosure must be in writing or an electronic format and include the following:

- (1) Any capacity in which the bank, the trust company, or an affiliate of the bank or trust company acts for:

- (A) the issuer of the securities; or

- (B) the provider of the products or services;

that is the subject of the purchase or sale.

- (2) A statement that the bank, the trust company, or an affiliate of the bank or trust company has an interest in the subject of the purchase or sale, if applicable.

- (3) The rate and method by which that compensation was determined.

- (4) The name, telephone number, street address, and mailing address of an officer of the bank or trust company who may be contacted for further information.

- (5) A notice that the bank's or trust company's ability to make transactions described in subsection (a) ends upon receipt at any time of a notice of objection by a majority of the persons entitled to receive statements of account activity.

(c) The following apply to a purchase or sale under subsection (a):

- (1) Except as provided in subdivisions (2) and (3), if the fiduciary relationship is a trust or an agency, the trustee or

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agent shall treat the purchase or sale under subsection (a) as if it were a conflict of interest transaction under IC 30-4-3-5 and shall give any notice and obtain any consent that may be required under IC 30-4-3-5, subject to the following:

(A) IC 30-2-14-16 applies to any notice required to be given by a trustee or an agent under this subdivision, subject to the following:

(i) If the fiduciary relationship is a revocable trust with one (1) or more living grantors, the trustee must give notice only to the living grantors, who shall be considered to have all income and principal interests in the trust at the time the notice is given. If a grantor is incapacitated, the trustee shall give notice to the grantor's court appointed guardian, the principal under a durable power of attorney, or a co-trustee of the revocable trust, unless the guardian, principal, or co-trustee is the bank or trust company that seeks the consent. If the representative of the incapacitated grantor is the bank or trust company that seeks the consent to a purchase or sale under subsection (a), the trustee shall obtain consent from the court.

(ii) If the fiduciary relationship is a revocable trust and the assets of the revocable trust are distributable to one (1) or more other trusts, notice shall be given to the trustees of the other trusts. However, if the bank or trust company that seeks the consent to a purchase or sale under subsection (a) is the trustee of another trust to which the assets of the revocable trust are distributable, the bank or trust company shall give notice to those beneficiaries of the other trust who are entitled to receive statements of account activity from the bank or trust company.

(iii) If the fiduciary relationship is an agency, the principal must consent to the purchase or sale under subsection (a) in writing in advance of the transaction. The principal shall be considered to have all income and principal interests in the account at the time the notice of the proposed transaction is given. If the principal is incapacitated, consent must be obtained from the principal's court appointed guardian, unless the guardian of the incapacitated principal is the bank or trust company that seeks the consent. If the guardian of

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the incapacitated principal is the bank or trust company that seeks the consent, consent to a purchase or sale under subsection (a) must be obtained from the court supervising the principal's guardianship.

(B) If the fiduciary relationship is a trust, the following apply with respect to any consent required to be obtained under IC 30-4-3-5(a)(2):

(i) Notwithstanding the requirement under IC 30-4-3-5(a)(2)(A) that all interested persons provide written consent to the proposed action, and subject to subdivision (2), a trustee, for a proposed purchase or sale under subsection (a), need only obtain the written consent of a majority of the persons entitled to notice under IC 30-2-14-16, as modified by this clause. However, the trustee must obtain the written consent of at least one (1) beneficiary who is receiving income under the trust at the time of the notice and at least one (1) individual who would receive a distribution of principal if the trust were terminated at the time notice is given.

(ii) Upon obtaining the written consents required under item (i), the trustee need not wait until the period to make written objections under IC 30-2-14-16 ends, in order to take the proposed action.

(2) Any consent granted under subdivision (1)(B)(i) may be revoked by a writing signed by a majority of the persons entitled to notice under IC 30-2-14-16, as modified by this subdivision. However, the revocation must be signed by:

(A) at least one (1) beneficiary who is receiving income under the trust at the time the revocation is signed; and

(B) at least one (1) individual who would receive a distribution of principal if the trust were terminated at the time the revocation is signed.

(3) The notice and consent otherwise required under subdivision (1) are not required if the purchase or sale under subsection (a) is specifically authorized:

(A) in the document creating the fiduciary relationship; or

(B) under IC 30-4-3-7.

SECTION 6. IC 28-6.1-6-26 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 26. (a) Unless otherwise provided in an agreement or a trust, a savings bank that holds funds or property as a fiduciary

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may use the funds or property to purchase from the savings bank or an affiliate of the savings bank a product, service, or security, including an insurance product or security that is underwritten by the savings bank, an affiliate of the savings bank, or a syndicate or selling group that includes the savings bank or an affiliate of the savings bank, if:

- (1) the purchase price and any ongoing charges and costs are fair, reasonable, and substantially equivalent to the cost of similar products and services; and
- (2) the purchase complies with IC 30-4-3.5.

The compensation for the product, service, or security received by the savings bank or an affiliate of the savings bank or a syndicate or selling group that includes the savings bank or an affiliate of the savings bank may be in addition to the compensation that the savings bank is otherwise entitled to from the fiduciary account.

(b) A savings bank that makes a purchase or sale described in subsection (a) shall disclose, at least annually, to each person entitled to receive statements of account activity from the savings bank any purchase or sale made by the savings bank during the year. The disclosure must be in writing or an electronic format and include the following:

- (1) Any capacity in which the savings bank or an affiliate of the savings bank acts for:
 - (A) the issuer of the securities; or
 - (B) the provider of the products or services;
 that is the subject of the purchase or sale.
- (2) A statement that the savings bank or an affiliate of the savings bank has an interest in the subject of the purchase or sale, if applicable.
- (3) The rate and method by which that compensation was determined.
- (4) The name, telephone number, street address, and mailing address of an officer of the savings bank who may be contacted for further information.
- (5) A notice that the savings bank's ability to make transactions described in subsection (a) ends upon receipt at any time of a notice of objection by a majority of the persons entitled to receive statements of account activity.

(c) The following apply to a purchase or sale under subsection (a):

- (1) Except as provided in subdivisions (2) and (3), if the fiduciary relationship is a trust or an agency, the trustee or

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agent shall treat the purchase or sale under subsection (a) as if it were a conflict of interest transaction under IC 30-4-3-5 and shall give any notice and obtain any consent that may be required under IC 30-4-3-5, subject to the following:

(A) IC 30-2-14-16 applies to any notice required to be given by a trustee or an agent under this subdivision, subject to the following:

(i) If the fiduciary relationship is a revocable trust with one (1) or more living grantors, the trustee must give notice only to the living grantors, who shall be considered to have all income and principal interests in the trust at the time the notice is given. If a grantor is incapacitated, the trustee shall give notice to the grantor's court appointed guardian, the principal under a durable power of attorney, or a co-trustee of the revocable trust, unless the guardian, principal, or co-trustee is the savings bank that seeks the consent. If the representative of the incapacitated grantor is the savings bank that seeks the consent to a purchase or sale under subsection (a), the trustee shall obtain consent from the court.

(ii) If the fiduciary relationship is a revocable trust and the assets of the revocable trust are distributable to one (1) or more other trusts, notice shall be given to the trustees of the other trusts. However, if the savings bank that seeks the consent to a purchase or sale under subsection (a) is the trustee of another trust to which the assets of the revocable trust are distributable, the savings bank shall give notice to those beneficiaries of the other trust who are entitled to receive statements of account activity from the savings bank.

(iii) If the fiduciary relationship is an agency, the principal must consent to the purchase or sale under subsection (a) in writing in advance of the transaction. The principal shall be considered to have all income and principal interests in the account at the time the notice of the proposed transaction is given. If the principal is incapacitated, consent must be obtained from the principal's court appointed guardian, unless the guardian of the incapacitated principal is the savings bank that seeks the consent. If the guardian of the incapacitated principal is the savings bank that seeks the

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consent, consent to a purchase or sale under subsection (a) must be obtained from the court supervising the principal's guardianship.

(B) If the fiduciary relationship is a trust, the following apply with respect to any consent required to be obtained under IC 30-4-3-5(a)(2):

(i) Notwithstanding the requirement under IC 30-4-3-5(a)(2)(A) that all interested persons provide written consent to the proposed action, and subject to subdivision (2), a trustee, for a proposed purchase or sale under subsection (a), need only obtain the written consent of a majority of the persons entitled to notice under IC 30-2-14-16, as modified by this clause. However, the trustee must obtain the written consent of at least one (1) beneficiary who is receiving income under the trust at the time of the notice and at least one (1) individual who would receive a distribution of principal if the trust were terminated at the time notice is given.

(ii) Upon obtaining the written consents required under item (i), the trustee need not wait until the period to make written objections under IC 30-2-14-16 ends, in order to take the proposed action.

(2) Any consent granted under subdivision (1)(B)(i) may be revoked by a writing signed by a majority of the persons entitled to notice under IC 30-2-14-16, as modified by this subdivision. However, the revocation must be signed by:

(A) at least one (1) beneficiary who is receiving income under the trust at the time the revocation is signed; and

(B) at least one (1) individual who would receive a distribution of principal if the trust were terminated at the time the revocation is signed.

(3) The notice and consent otherwise required under subdivision (1) are not required if the purchase or sale under subsection (a) is specifically authorized:

(A) in the document creating the fiduciary relationship; or

(B) under IC 30-4-3-7.

SECTION 7. IC 30-2-12-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) This chapter applies to an institutional fund in existence after June 30, 2007.

(b) For an institutional fund in existence before July 1, 2007, this chapter applies only to decisions made or actions taken after June

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SECTION 8. IC 30-2-12-1.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.3. As used in this chapter, "charitable purpose" means the following:**

- (1) Relief of poverty.**
- (2) Advancement of education.**
- (3) Advancement of religion.**
- (4) Promotion of health.**
- (5) Promotion of a governmental purpose.**
- (6) Any other purpose the achievement of which benefits the community.**

SECTION 9. IC 30-2-12-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 2. As used in this chapter, "endowment fund" means an institutional fund, or any part of the fund, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument. The term does not include assets that an institution designates as an endowment fund for the institution's use.**

SECTION 10. IC 30-2-12-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 3. As used in this chapter, "gift instrument" means a will, a deed, a grant, a conveyance, an agreement, a memorandum, a writing, or other governing document record, including the terms of any institutional solicitations, from which an institutional fund resulted) under which property is granted or transferred to or held by an institution as an institutional fund.**

SECTION 11. IC 30-2-12-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 5. As used in this chapter, "institution" means any of the following:**

- (1) An approved institution of higher learning (as defined in IC 20-12-21-3) and its related foundations;**
- (2) An organization that:**
 - (A) is an exempt organization under Section 501(c)(3) of the Internal Revenue Code;**
 - (B) has an endowment fund with a fair market value of at least ten million dollars (\$10,000,000); and**
 - (C) is not a religious organization;**
- (3) A community foundation or trust:**
 - (1) A person, other than an individual, that is organized and operated exclusively for charitable purposes.**
 - (2) The state, including any agency or instrumentality of the state, or a unit of local government to the extent that the state**

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or unit holds funds exclusively for charitable purposes.

(3) A trust that has only charitable interests, including a trust:

(A) that previously had both charitable and noncharitable interests; and

(B) the noncharitable interests of which were previously terminated.

SECTION 12. IC 30-2-12-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. ~~(a)~~ As used in this chapter, "institutional fund" means a fund held by an institution **exclusively for its exclusive use, benefit, or charitable purposes.** The term does not include the following:

(1) ~~Except as provided in subsection (b);~~ A fund held for an institution by a trustee that is not an institution.

(2) A fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

(3) Assets held by an institution primarily for charitable purposes and not primarily for investment purposes.

~~(b) The term includes a fund that is held exclusively for the benefit of a community foundation or trust regardless of the nature of the trustee or fiduciary.~~

SECTION 13. IC 30-2-12-6.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6.4. **As used in this chapter, "person" means an individual, a corporation, a business trust, an estate, a trust, a partnership, a limited liability company, an association, a joint venture, a public corporation, the state of Indiana, a state agency or instrumentality, a unit of local government, or any other legal or commercial entity.**

SECTION 14. IC 30-2-12-6.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6.7. **As used in this chapter, "record" means information that is:**

(1) inscribed on a tangible medium; or

(2) stored in an electronic or other medium; and

is retrievable in a perceivable form.

SECTION 15. IC 30-2-12-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. ~~Section 8 of this chapter does not apply if the applicable gift instrument indicates the donor's intention that net appreciation may not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or~~

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~~authorization in the applicable~~ (a) Subject to the terms of a gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund that the institution determines is prudent for the uses, benefits, purposes, and duration of the endowment fund. Except as provided in a gift instrument, the assets in an endowment fund are donor restricted until appropriated by the institution.

(b) In determining to appropriate or accumulate endowment funds, an institution shall:

- (1) act in good faith and with the care a prudent person acting in a like position would use under similar circumstances; and
- (2) consider the following factors:
 - (A) The duration and preservation of the endowment fund.
 - (B) The purposes of the institution and the endowment fund.
 - (C) General economic conditions.
 - (D) The possible effects of inflation or deflation.
 - (E) The expected total return from income and the appreciation of investments.
 - (F) Other resources of the institution.
 - (G) The investment policy of the institution.

(c) To be effective, a gift instrument must specifically state a limitation on the authority of an institution to appropriate or accumulate under subsection (a).

(d) A gift instrument **that designates a gift as an endowment or contains a direction or authorization** to use only income, interest, dividends, rents, issues, or profits, or to preserve the principal intact, or a similar direction:

- (1) **creates an endowment fund of permanent duration unless the gift instrument states otherwise; and**
- (2) **does not otherwise limit the authority to appropriate or accumulate under subsection (a).**

SECTION 16. IC 30-2-12-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 13. (a) With the ~~written~~ consent of the donor **in a record, the governing board an institution** may **modify or** release, in whole or in part, a restriction ~~imposed by the applicable in a gift instrument on the use or management,~~ investment, **and purpose** of an institutional fund.

(b) A release under this section may not allow an institutional fund to be used for purposes other than the **charitable** purposes of the institution affected.

~~(c) This section does not limit the application of the doctrine of cy~~

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pres or the ability of the governing body through legal or equitable proceedings to obtain a release of a restriction in an applicable gift instrument.

(c) An institution may petition a court to modify, in a manner consistent with the donor's intentions to the extent practicable, a restriction in a gift instrument concerning the management or investment of an institutional fund if:

- (1) the restriction is impracticable or wasteful;
- (2) the restriction impairs the management or investment of the fund; or
- (3) due to unanticipated circumstances, the modification will further the purposes of the institutional fund.

An institution shall notify the attorney general of a petition under this subsection. A court shall provide the attorney general an opportunity to be heard on the petition.

(d) An institution may petition a court to modify, in a manner consistent with the gift instrument, the charitable purpose of a fund or a restriction on the use of a fund if the charitable purpose or use becomes unlawful, impracticable, impossible, or wasteful. An institution shall notify the attorney general of a petition under this subsection. A court shall provide the attorney general an opportunity to be heard on the petition.

(e) If an institution determines that a restriction in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible, or wasteful, the institution shall notify the attorney general. Not more than sixty (60) days after providing notice under this subsection, the institution may release or modify all or part of the restriction if:

- (1) the value of the institutional fund subject to the restriction is less than twenty-five thousand dollars (\$25,000);
- (2) the institutional fund was established more than twenty (20) years earlier; and
- (3) the institution uses the institutional fund in a manner consistent with the charitable purposes expressed in the gift instrument.

SECTION 17. IC 30-2-12-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 14. (a) An institution that manages or invests an institutional fund shall consider the following:**

- (1) The intent of a donor expressed in a gift instrument.



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- (2) The charitable purposes of the institution.
- (3) The purposes of the institutional fund.
- (b) A person who is responsible for managing or investing an institutional fund shall:
 - (1) comply with the duty of loyalty imposed by any law; and
 - (2) manage or invest the fund in good faith and with the care a prudent person acting in a like position would use under similar circumstances.
- (c) An institution that manages or invests an institutional fund:
 - (1) may only incur costs that are appropriate and reasonable in relation to:
 - (A) the assets of;
 - (B) the purposes of; and
 - (C) the skills available to;
 - the institution; and
 - (2) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.
- (d) An institution may pool two (2) or more institutional funds for purposes of management or investment.
- (e) Subject to the terms of a gift instrument, an institution or a person shall do the following:
 - (1) An institution that manages or invests an institutional fund shall consider the following factors:
 - (A) General economic conditions.
 - (B) The possible effects of inflation or deflation.
 - (C) The possible tax consequences of investment decisions or strategies.
 - (D) The role of each investment or course of action in relation to the overall investment portfolio of the institutional fund.
 - (E) The expected total return from income and the appreciation of investments.
 - (F) Other resources of the institution.
 - (G) The needs of the institution and institutional fund to make distributions and to preserve capital.
 - (H) The relationship or value of an asset to the charitable purposes of the institution.
 - (2) An institution shall make management and investment decisions about an individual asset:
 - (A) in the context of an institutional fund's portfolio of investments as a whole and not in isolation; and
 - (B) as part of an overall investment strategy that has risk

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and return objectives reasonably suited to the institutional fund and to the institution.

(3) Except as otherwise provided in law, an institution may invest in any kind of property or type of investment.

(4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, due to special circumstances, the purposes of the institutional fund are better served without diversification.

(5) Within a reasonable time after receiving property, an institution shall:

(A) retain or dispose of the property; or

(B) otherwise rebalance the investment portfolio;

to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution.

(6) A person that has, or represents to have, special skills or expertise shall use the skills or expertise to manage or invest institutional funds.

(7) Notwithstanding any other provision in this chapter, an institution may retain property contributed by a donor to an institutional fund as long as the governing board of the institution considers it advisable.

SECTION 18. IC 30-2-12-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 15. (a)** Subject to the terms of a gift instrument and except as provided in any other law, an institution may delegate to an agent the management or investment of an institutional fund. The institution shall act in good faith and with the care a prudent person acting in a like position would use under similar circumstances in doing the following:

(1) Selecting an agent.

(2) Establishing the scope and terms of the delegation, subject to the purposes of the institution and the institutional fund.

(3) Periodically reviewing the agent's actions to monitor the agent's performance of and compliance with the scope and terms of the delegation.

An institution that complies with this subsection is not liable for the decisions or actions of an agent to whom the management or investment of an institutional fund is delegated.

(b) An agent shall exercise reasonable care to perform a delegated function in compliance with the scope and terms of the delegation.

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(c) An agent that accepts the delegation of a management or investment function from an institution submits to the jurisdiction of Indiana courts in all proceedings concerning the delegation or the performance of a delegated function.

(d) An institution may delegate management or investment functions to its committees, officers, or employees as otherwise provided by law.

SECTION 19. IC 30-2-12-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 16. Compliance with this chapter shall be determined in light of the facts and circumstances existing at the time a decision is made or action is taken and not by hindsight.**

SECTION 20. IC 30-2-12-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 17. (a) Except as provided in subsection (b), this chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.**

(b) This chapter does not:

- (1) modify, limit, or supersede 15 U.S.C. 7001(a); or**
- (2) authorize electronic delivery of a notice described in 15 U.S.C. 7003(b).**

SECTION 21. IC 30-2-12-18 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 18. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.**

SECTION 22. IC 30-4-3-7, AS AMENDED BY P.L.238-2005, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 7. (a) Unless the terms of the trust provide otherwise or the transaction is authorized under IC 28-1-12-8 or IC 28-6.1-6-26, the trustee has a duty:**

- (1) not to loan funds to himself the trustee or an affiliate;**
- (2) not to purchase or participate in the purchase of trust property from the trust for the trustee's own or an affiliate's account;**
- (3) not to sell or participate in the sale of the trustee's own or an affiliate's property to the trust; or**
- (4) if a corporate trustee, not to purchase for or retain in the trust its own or a parent or subsidiary corporation's stock, bonds, or other capital securities. However, the trustee may retain such**

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securities already held in trusts created prior to September 2, 1971.

(b) Unless the terms of the trust provide otherwise, a corporate trustee may invest in, purchase for, or retain in the trust its own or an affiliate's obligations, including savings accounts and certificates of deposit, without the investment, purchase, or retention constituting a conflict of interest under section 5 of this chapter.

(c) Unless the terms of the trust provide otherwise, a corporate trustee does not violate subsection (a) by investing in, purchasing for, or retaining in the trust its own or an affiliate's obligations, including savings accounts and certificates of deposit, if the payment of each obligation is fully insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or any insurer approved by the department of financial institutions under IC 28-7-1-31.5.

(d) If the terms of the trust permit the trustee to deal with a beneficiary for the trustee's own account, the trustee has a duty to deal fairly with and to disclose to the beneficiary all material facts related to the transaction which the trustee knows or should know.

(e) Unless the terms of the trust provide otherwise, the trustee may sell, exchange, or participate in the sale or exchange of trust property from one (1) trust to ~~himself~~ **the trustee** as trustee of another trust, provided the sale or exchange is fair and reasonable with respect to the beneficiaries of both trusts and the trustee discloses to the beneficiaries of both trusts all material facts related to the sale or exchange which the trustee knows or should know.

(f) This section does not prohibit a trustee from enforcing or fulfilling any enforceable contract or agreement:

- (1) executed during the settlor's lifetime; and
- (2) between the settlor and the trustee in the trustee's individual capacity.

SECTION 23. IC 30-4-3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11. (~~Liability of the Trustee to the Beneficiary~~)

(a) The trustee is accountable to the beneficiary for the trust estate.

(b) If the trustee commits a breach of trust, he is liable to the beneficiary for:

- (1) any loss or depreciation in the value of the trust property as a result of the breach;
- (2) any profit made by the trustee through the breach;
- (3) any reasonable profit which would have accrued on the trust

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property in the absence of a breach; and

(4) reasonable attorney's fees incurred by the beneficiary in bringing an action on the breach.

(c) In the absence of a breach of trust, the trustee has no liability to the beneficiary either for any loss or depreciation in value of the trust property or for a failure to make a profit. **However, if:**

(1) a loss or depreciation in value of the trust property; or

(2) the trust's failure to make a profit;

is the result of a violation by the trustee of IC 28-1-12-8 or IC 28-6.1-6-26, one (1) or more beneficiaries of the trust may petition the court for any remedy described in subsection (b) or for removal of the trustee under section 22(a)(4) of this chapter, regardless of whether the transaction under IC 28-1-12-8 or IC 28-6.1-6-26 constitutes or involves a breach of trust. The court may award one (1) or more remedies described in subsection (b) or remove the trustee, or both, if the court determines that the remedy or the removal of the trustee is in the best interests of all beneficiaries of the trust. The burden of proof is on the one (1) or more petitioning beneficiaries to demonstrate that the remedy or the removal of the trustee is in the best interests of all beneficiaries of the trust.

(d) The trustee is liable to the beneficiary for acts of an agent which, if committed by the trustee, would be a breach of the trust if ~~he~~ **the trustee:**

(1) directs or permits the act of the agent;

(2) delegates the authority to perform an act to the agent which ~~he~~ **the trustee** is under a duty not to delegate;

(3) fails to use reasonable care in the selection or retention of the agent;

(4) fails to exercise proper supervision over the conduct of the agent;

(5) approves, acquiesces in, or conceals the act of the agent; or

(6) fails to use reasonable effort to compel the agent to reimburse the trust estate for any loss or to account to the trust estate for any profit.

SECTION 24. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2007]: IC 30-2-12-1.5; IC 30-2-12-4; IC 30-2-12-7; IC 30-2-12-8; IC 30-2-12-10; IC 30-2-12-11; IC 30-2-12-12.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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